

REMARKS

In the above-referenced Office Action, the Examiner rejected claim 18 under 35 U.S.C. § 102(a) as being anticipated by Simonek (U.S. Patent No. 5,974,719); rejected claims 1-4, 7, 11, 12, and 14-16 under 35 U.S.C. § 102(a) as being anticipated by Eppard et al. (U.S. Patent No. 6,726,163); rejected claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Eppard et al. in view of Devall (U.S. Patent No. 5,723,808); rejected claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Eppard et al. in view of Simonek; rejected claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Eppard et al. in view of Peterson (U.S. Patent No. 6,637,708); rejected claim 13 under 35 U.S.C. § 103(a) as being unpatentable over Eppard et al. in view of Devall and Potts et al. (U.S. Patent No. 6,425,697); and indicated that claims 8-10 are objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant has amended claims 1-5, 7-12, 15, and 18; cancelled claim 6; and added claim 19. Claims 1-5 and 7-19 are currently pending. Amendments to claims 2-5, 7-11, and 15 are to change dependency of the claims. These amendments are not related to patentability, as they are not related to any rejection or elements that were added to claim 1 in this amendment. Thus, these claims are not subject to limitations on their scope. Applicant has added new claim 19 using the more narrow transitional phrase “consisting of” to highlight the simplicity of the invention by the limited number of elements used.

The Examiner rejected claim 18 under 35 U.S.C. § 102(a) as being anticipated by Simonek, indicating that the reference discloses an arm 14 attached to support 24, support element 50 attached to the arm, and plural rest members 56 and 58 attached to the support element. Applicant has amended claim 18 and the arm is required to extend in a generally horizontal direction away from the support structure, as shown in Fig. 1 of the present application for example. The arm 24 of Simonek is attached to a tripod base 12 (or support 24 – swivel plate, col. 2, line 34) and is to extend upward or vertically to provide a support for a gun on various surfaces, including a level paved surface, and uneven and gently sloping terrain. Col. 1, lines 47-50. The arm of Simonek therefore does not (and indeed cannot) extend in a generally horizontal direction away from the support structure as required by the amended claim 18. Amended claim 18 also requires that the support element is attached to an end of the arm. The support element 50 in Simonek is attached to the arm 14 in the center of the support element 50 to provide stability to the gun rest on the variety of surfaces. Applicant asserts that the support element 50 of Simonek could not be altered to be attached at the end of the arm. Thus, the reference does not disclose or suggest the invention of amended claim 18 and claim 18 is therefore allowable.

The Examiner then rejected claims 1-4, 7, 11, 12, and 14-16 under 35 U.S.C. § 102(a) as being anticipated by Eppard et al. Applicant has amended claim 1 by adding that the support element has a plurality of rest members spaced from one another along at least a portion thereof. Eppard et al. fails to disclose or suggest the invention in amended claim 1 for several reasons. First, amended claim 1 requires that a support element is attached to at

least one of the extendable arm. In Eppard et al., the support element 22 is not attached to the end of the extendable arm, but rather slides through the ends 130,134 of the forks 16,18 and back to the horizontal member 78 near the support structure. See col. 7, l. 42 – col. 8, l. 45. Thus, the reference does not disclose or suggest that the support element is attached to the end and the claim is allowable for this reason alone.

Amended claim 1 also requires that the support element has a plurality of rest members spaced from one another along at least a portion of the support element. Eppard et al. has only one rest member. To change the height of the rest member in Eppard et al. relative to the hunter, the hunter must alter the length of the cords 22,24. The support element and its cords are then pulled through holes in the horizontal member 78 near the intersection of the vertical member 76 or in a pair of openings 144 in the base portion 94 to control the length or height of the support element. See col. 7, l. 42 – col. 8, l. 45. This procedure is inefficient, requires the hunter to change attention from the target to altering the length of the cords, and potentially causes sounds that will scare the target or give away the hunter's position. This arrangement is also more complicated, more difficult to operate at the critical time when the height of the support elements and/or firearm need to be changed. Applicant also asserts that there is a possibility that the cords could be pulled into the base member or get caught therein when changing the length of the arm by moving the Y-shaped connector 14 in and out of the horizontal member 78. Amended claim 1 is allowable for these additional reasons.

In the Office Action at p. 3, the Examiner rejected claim 6 (now cancelled), which included the limitation that the support element had a plurality of rest members by combining Eppard et al. with Simonek. Since that element of claim 6 is now present in amended claim 1, Applicant will address that rejection with respect to amended claim 1. The combination of references by the Examiner is inappropriate, structurally impossible, and lacks motivation for the combination. The combination is inappropriate because it based entirely on impermissible hindsight by the Examiner. Applicant asserts that the Examiner searched for two references that had the elements and tried to force their combination. To wit, the use of supports 16 and 60 of Simonek with the shooting rest of Eppard et al. is structurally impossible. In the Office Action, the Examiner failed to show how the two supports of Simonek can be used or modified to be used with the shooting rest of Eppard et al. Applicant asserts that the combination of the elements into one device would make the device overly large and cumbersome, if the combination were even possible. Applicant also asserts that the support elements 16,60 of Simonek cannot be attached to support 20 of Eppard et al. in any reasonable way, causing the device in Eppard et al. to have to be reconstructed or re-engineered to accommodate the additional supports. Moreover, Eppard et al. provides a way to alter the height of the support element 20, negating any allegation that one of ordinary skill in the art would look for a way to alter the height of the support element, since a method for doing so is already provided. Thus, amended claim 1 is not disclosed or suggested by the references of record, alone or in combination, and is therefore allowable.

Claims 2-5 and 7-11, which depend from allowable amended claim 1, are now allowable for at least the same reasons.

Independent claim 12 requires, inter alia, a support element secured to a second end of the extendable arm and that the support element has a plurality of rest members. As noted above with respect to amended claim 1, Eppard et al. fails to disclose or suggest a firearm support system that has either or both of those elements. The support element in Eppard et al. is not secured to the second end of the extendable arm and the device only has one rest member. Moreover, Applicant has shown that the combination of Eppard et al. with the other references cited in the Office Action, including Simonek, cannot be combined to disclose or suggest such a firearm support system. Thus, amended claim 12 is allowable.

Claims 14-16, which depend from allowable claim 12, are also allowable for at least the same reasons.

The Examiner then rejected claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Eppard et al. in view of Devall. The Examiner indicated that Eppard et al. discloses everything in the claim but the extendable arm that comprises pivoting arm segments. Office Action at p. 2-3. The Examiner then alleged Devall teaches that it is known to have pivoting arm segments from the extendable arm of a tree mounted firearm support. Office Action at p. 3. The Examiner also alleged that the motivation of such a “mere substitution” is the advantages of increased positioning function available with the plural pivoting elements. Id. The rejection of claim 5 must be withdrawn for at least two reasons.

First, the two references do not disclose or suggest the claimed invention, alone or in combination. Amended claim 1, the claim from which claim 5 depends, is allowable over Eppard et al. for the reasons noted above and which will not be repeated here, and Devall does not cure those deficiencies of Eppard et al. For this reason alone, the claim is allowable.

Second, the combination of the two references is physically impossible. As noted above, the cord 23, which supports and controls the height of cradle 20, passes through the y-shaped connector 14 and horizontal member 78. Applicant cannot understand how the cord 23 in Eppard et al., which is relied upon by the Examiner, can be maintained inside the arm and still allow for variation in the height of the cradle 20 when combined with the pivoting arm segments of Devall. The pivoting of the arm would interfere with the movement of the cord. In order to combine these references, the devices in both references would have to be reconstructed in order to work as required by the claim. Additionally, Eppard et al. provides a solution for reducing the length of the device with the slideable portions, negating any need to combine the references. Thus, this claim is allowable over the references for this additional reason.

The Examiner then rejected claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Eppard et al. in view of Peterson. The Examiner relied on Eppard et al. as noted above and indicated that it failed to disclose that the fixed structure is a tree stand, but that Peterson discloses attaching a firearm support system to a tree stand. As also noted above, Eppard et al. does not disclose or suggest the invention claimed in amended claim 1, the claim from

which rejected claim 17 depends. The disclosure of Peterson (i.e., attaching an aiming support to a tree stand) does not cure the deficiencies noted above with respect to claim 1. Therefore, claim 17 is allowable for at least this reason.

The Examiner then rejected claim 13 under 35 U.S.C. § 103(a) as being unpatentable over Eppard et al. in view of Devall and Potts et al. The Examiner alleged that Eppard et al. discloses a firearm support system comprising a telescopic extendable arm 94, a flexible support element 22 attached to the extendable arm, rest member 20 connected to the support element, and a pivoting support attachment member 10 that accepts a portion of the extendable arm and is attached to a fixed structure. Office Action at p. 5. The Examiner admitted that Eppard et al. fails to disclose that the extendable arm could comprise a rounded portion with threads to engage the support structure, but that Devall teaches a pivoting extendable arm of a tree mounted firearm support having a rounded portion that is attached within the tube of an attachment member. Id. However, the Examiner then admitted that Devall fails to teach the round portion includes threads to engage the support structure. Id. The Examiner then cited Potts et al. for the proposition that it teaches threads on the end of a gun rest to secure the arm to the support element. Id.

The citation of the three references to render the invention in claim 13 obvious is clearly a product of impermissible hindsight by the Examiner. While this reason alone provides sufficient reason to require a withdrawal of the rejection, the combination of the references fails to disclose or suggest the claimed invention even if hindsight were not used. The Examiner cited element 16a for the proposition of using threads to secure the arm to a

support element. Office Action at p. 4. The purpose of the invention in Potts et al. is to provide a camera mounting assembly for a firearm. The Potts et al. device provides a mechanism to allow a camera to capture the shooting by the firearm by maintaining a camera focused on the direction of the firearm. The device does not disclose or suggest the use of threads to secure the arm to a support element as alleged by the Examiner. Rather, the element noted by the Examiner, element 16a of Potts et al., is an upper portion of swing arm 16, which is used to connect the firearm mount 12 and the camera support 18 to one another. Furthermore, the other two references, alone or in combination, do not disclose or suggest the remaining elements of the invention claimed in claim 12, the claim from which claim 13 depends, and claim 13 is allowable for this reason alone.

Applicant has also added new claim 19, using the more restrictive transitional phrase “consisting of” rather “comprising” to highlight the more limited elements needed for the present invention. Claim 19 also requires, inter alia, that the arm extend in a generally horizontal direction away from the structure and that a support element is fixed to one end of the arm and has a plurality of rest members. The references, alone or in combination, do not disclose or suggest such a support system and this claim is allowable.

Applicant has added one new independent claim and has authorized the charging of the additional fee. No other fees are believed to be due in connection with the filing of this response.

Respectfully submitted,



Michael L. Leetzow
Registration No. 35,932
Michael L. Leetzow, P.A.
5213 Shoreline Circle
Sanford, FL 32771
Telephone: 407/302-9970

Date: 5/23/05